IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2006

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THE HONOURABLE MR. JUSTICE K.MOHAN RAM

W.P. No.3145 of 1999

1. V.Ramasami
2. S.V.Madhavan
3. C.Pushpam
4. G.Thiagarajan
5. P.Thangaraj … Petitioners

Vs.

1. State of Tamil Nadu
   Represented by Commissioner
   Hindu Religious & Charitable Endowment Department
   Chennai - 600 034.

2. The Joint Commissioner
   Hindu Religious & Charitable Endowment Department
   Madurai - 625 001.

3. The Executive Officer,
   Arulmigu Dhandyuthapani Swami Thirukkoil
   Nethaji Road,
   Madurai - 625 001.

4. P.Subramanian, … Respondents.

Prayer : Petition filed under Article 226 of the Constitution of India Praying for the issuance of a Writ of Certiorari calling for the records of the respondents culminating in Second Respondents Order Na.Ka.12939/98-1/P C dated 23.11.1998 and quash the same.

For Petitioners : Mr. K.S.Duraipandi
For Respondents : Mr. P.Gopalan.
Mr. Sugumar, Spl. G.P. (HR & CE)

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O R D E R

The prayer in the writ petition is for the issuance of a Writ of Certiorari calling for the records of the respondents culminating in Second Respondent's Order Na.Ka.12939/98-1/P C dated 23.11.1998 and quash the same.

2. The brief facts of the case are set out below:

(i) The first petitioner is the Chairman and other petitioners are the trustees of the Trust Board of Arulmigu Dhandayuthapani Thirukoil, Madurai. In 1996, the first respondent announced a policy to appoint 150 Tamil Pulavars to perform certain functions like recite Devaram, Thiruvasagam, etc., on a consolidated monthly pay of Rs.1,500/-. The first respondent selected totally 150 Tamil Pulavars for the Temples in the cities of Chennai, Madurai, Trichy and Coimbatore. The Temples were permitted to employ them as Pulavars under Section 55 of the Hindu Religious and Charitable Endowment Act. By letter dated 17.09.1998, the first respondent immediately directed the third respondent to appoint the fourth respondent. The petitioners brought to the notice of the first respondent by their letter dated 05.10.1998 that the Trust Board has not passed any Resolution for the appointment of the Pulavar of the Temple and requested the first respondent to reconsider the said decision. The reasons for seeking reconsideration of the decision were that the temple does not have sufficient space, there is no library in the temple and the Hundi collection is approximately only Rs.30,000/- per month and hence it would be difficult to make payment to the Pulavar after meeting the temple expenses. It was also brought to the notice of the first respondent that one Mr. Vannamuthu has already giving religious lectures on payment of Rs.150/- per lecture.

(ii) While so, the second respondent by his letter dated 23.11.1998 directed the first petitioner to issue appointment order to the fourth respondent through the third respondent. The said proceedings of the second respondent is challenged in the above writ petition. On receipt of the communication from the second respondent, the third respondent requested the Trust Board to pass a Resolution for appointment and filing up the Pulavar post. But the Trust Board resolved not to make such appointments. But inspite of the said resolution, the third respondent without the knowledge and consent of the petitioners, had appointed the fourth respondent, as Pulavar for the Temple. Inspite of the letter dated 04.12.1998 written by the petitioners to the first respondent, the appointment has not been cancelled and hence the above writ petition has been filed.

3. The main contention of the petitioners is that under Section 55 of the Hindu Religious and Charitable Endowment Act, the trustees alone can make appointment of temple staff and the executive officer has no say in

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that. When the Trust Board has specifically declined to make the appointment, the action of the Executive Officer in appointing the fourth respondent is contrary to Section 55. It is further contended that the proceedings of the first respondent dated 10.06.1997 only permit the making of such appointment of Tamil Pulavar and it does not compel such appointment.

4. Respondents 1 and 2 have not filed any counter affidavit. The third respondent has filed a counter affidavit contending that only with a view to implement the policy of the Government of Tamil Nadu with regard to the appointment of Tamil Pulavars, in furtherance of the direction issued by the first respondent, the third respondent has appointed the fourth respondent to the post of Tamil Pulavar in the Temple. The third respondent has admitted that under Section 55 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, only the Trust Board of the Temple is the appointing authority in the matter of appointment of Ulthurai and outdoor servants in the Temple. It is also admitted by the third respondent that Temple did not approve the appointment of the fourth respondent as Tamil Pulavar. In view of the stand taken by the Trust Board of the Temple, the fourth respondent could be in service only for 2 months till 31.01.1999 and thereafter the fourth respondent did not perform any service in the Temple. It is also admitted by the third respondent that the Trust Board has not passed any Resolution for the appointment of fourth respondent herein as Pulavar in the Temple. It is also admitted in the counter affidavit that the temple is situated only in a small area of 300 Sq. ft., in which, sanctum sanatorium is occupied by about 150 sq. ft. It is also admitted that the Hundial collection is utilised for the maintenance of the Temple including for Establishment expenses. The third respondent has also stated in the counter affidavit that since the fourth respondent herein is no longer in the service of the third respondent-Temple, nothing survives in the writ petition and prayed for dismissal of the writ petition.

5. The fourth respondent has filed a counter affidavit contending that he joined duty on 04.12.1998 and he was paid salary for the months of December 1998 and January 1999 and thereafter he was not allowed to sign the attendance register from 12.03.1999 and thereby not allowed to do his duties by the third respondent and the petitioners. He has further contended that the above writ petition is not maintainable since the Temple has not filed the writ petition.

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6. Heard the learned counsel for the petitioners and the respondents.

7. The learned counsel for the petitioners reiterated the contentions raised in the affidavit and submitted that no Resolution has been passed by the Trust Board seeking appointment to the post of Tamil Pulavar. The learned counsel relying upon the decision of a Division Bench of this Court reported in 2000 W.L.R. 364 (Assistant Commissioner/Executive Officer, Arulmigu Vana Badrakaliamman Temple Vs. T.Kumaresan and others),

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submitted that under Section 55 of the HR & CE Act, the Trustees have power to appoint staff of the Temple and they alone have got power to appoint and respondents 1 to 3 have no power to appoint. The learned counsel further submitted that when power is given to the trustees to appoint office-holders and servants in religious institutions under Section 55 of the said Act, such power cannot be taken away by administrative orders.

8. Mr. G.Sugumar, learned counsel appearing for respondents 1 and 2 submitted that the impugned proceedings is only recommendatory in nature and it is not binding on the trustees. The said submission of Mr. G.Sugumar is countered by the learned counsel for the petitioner by inviting my attention to the impugned proceedings, wherein, it is stated that the appointment should be made without delay and if the appointment is not made disciplinary proceedings will be taken against the third respondent, Executive Officer and submitted that in view of the above said warning issued to the third respondent, the impugned proceedings cannot be considered to be recommendatory in nature.

9. When Mr. G.Sugumar, learned counsel for respondents 1 and 2 thus submitted that the impugned proceedings are recommendatory in nature and does not binding on the trustees, there need not be any apprehension in the minds of the petitioners. Further the third respondent has categorically stated that the fourth respondent is no longer in the service of the Temple. Anyway to allay the apprehension expressed by the petitioners in the writ petition, it is necessary to point out that as laid down in 2000 W.L.R. 364, the power is given only to the Trustees to appoint staff of the Temple and they alone have got power to appoint office-holders and servants in religious institutions under Section 55 of the said Act and such power cannot be taken away by administrative orders. In view of the same, the impugned proceedings are liable to the set-aside and accordingly it is set-aside.

10. With the above observation, this writ petition is allowed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

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   Nethaji Road,
   Madurai - 625 001.

+ one cc to Mr K.S.Durai Pandi, Advocate SR 17169

+ One cc to Mr P.Gopalan, Advocate SR 17411

+ One cc to Government Pleader SR 17356

BVR(CO)
CGS/17.4

Pre-Delivery Order in
W.P. No.3145 of 1999

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